



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

18 OCT 1999

CEMP-RS (200-1c)

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Model Cooperative Agreement with States Under the Formerly Utilized Sites Remedial Action Program (FUSRAP)

1. Reference Memorandum, CEMP-R, 15 Dec 1997, Subject: Cooperative Agreement with States Under the Formerly Utilized Sites Remedial Action Program (FUSRAP), (enclosure 1).
2. The memorandum at enclosure 1 authorized the Corps to enter into cooperative agreements with states.
3. Enclosed is a draft of the cooperative agreement between the Baltimore District and the State of Maryland (enclosure 2).
4. MSCs currently engaged in preparing or negotiating cooperative agreements with states under FUSRAP are encouraged to use enclosure 2 as a model, with appropriate site-specific changes.
5. Matters relating to verification and appropriateness of an individual contracting officer's authority to sign the agreement on behalf of the Corps should be referred to the Office of the Principal Assistant Responsible for Contracting for clarification.
6. The point of contact for this matter is Mr. Kip Huston, (202) 761-8100.

FOR THE COMMANDER:

Encl


RUSSELL L. FUHRMAN
Major General, USA
Director of Civil Works

CEMP-RS (200-1c)

SUBJECT: Policy on Eligibility of Vicinity Properties Under the Formerly Utilized Sites Remedial Action Program (FUSRAP)

DISTRIBUTION:

COMMANDER,

U.S. ARMY ENGINEER DIVISION, GREAT LAKES AND OHIO RIVER

U.S. ARMY ENGINEER DIVISION, MISSISSIPPI VALLEY

U.S. ARMY ENGINEER DIVISION, NORTH ATLANTIC

U.S. ARMY ENGINEER DIVISION, NORTHWESTERN

CF:

COMMANDER,

U.S. ARMY ENGINEER DISTRICT, BALTIMORE

U.S. ARMY ENGINEER DISTRICT, BUFFALO

U.S. ARMY ENGINEER DISTRICT, KANSAS CITY

U.S. ARMY ENGINEER DISTRICT, NEW ENGLAND

U.S. ARMY ENGINEER DISTRICT, NEW YORK

U.S. ARMY ENGINEER DISTRICT, OMAHA

U.S. ARMY ENGINEER DISTRICT, PHILADELPHIA

U.S. ARMY ENGINEER DISTRICT, ST. LOUIS

Director, Military Programs (CEMP)

Director, Real Estate (CERE)

Director, HTRW Center of Expertise (CENWO-HX)

Chief Counsel (CECC)

Chief, Public Affairs (CEPA)

Chief, Policy and Technical Branch (CEMP-RT)

Chief, Intergovernmental and Superfund Support Branch (CEMP-RS)

Chief, Safety and Occupational Health Office (CESO)

Principal Assistant Responsible For Contracting (PARC)



DEPARTMENT OF THE ARMY
U.S. Army Corps of Engineers
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

15 DEC 1997

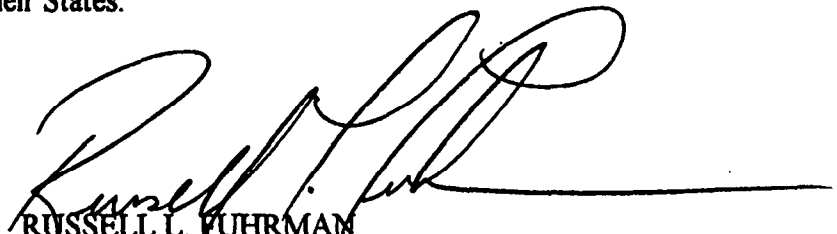
CECW-BA

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Use of Cooperative Agreements with States Under the Formerly Utilized Sites Remedial Action Program (FUSRAP)

1. In separate correspondence, I informed you that the U.S. Army Corps of Engineers may administer transferred state grants under FUSRAP and make payments to the States for services provided, consistent with the provisions of the grant agreements. The Corps Chief Counsel has opined that the Corps may enter into cooperative agreements with States for activities associated with remediation at currently-eligible sites under FUSRAP. This memorandum authorizes you to enter into cooperative agreements with States when their participation and involvement is beneficial to the effective execution of project work. You may delegate this authority to district commanders. The procedures and guidance in OMB Circular A-102, Grants and Cooperative Agreements with State and Local Governments, will be followed. Copies have been mailed to you and your district commanders under separate cover.
2. The use of cooperative agreements presents exceptional opportunities for us to continue partnerships with States with current or expired grants, and begin partnerships with States which have expressed interest in working with the Corps on FUSRAP projects. The development, negotiation and execution of cooperative agreements must be a division and district team effort, tailored to your particular project requirements.
3. Request that you inform States with current or expired grants, and States that have expressed an interest in working with the Corps on FUSRAP projects, that we will endeavor to support their future participation through cooperative agreements. Let them know that we appreciate their past work and hope it will continue. Welcome them as partners and assure them that the Corps is committed to the success of FUSRAP in their States.

FOR THE COMMANDER:


RUSSELL L. FUHRMAN
Major General, USA
Director of Civil Works

DISTRIBUTION:

Commander, Great Lakes and Ohio River Division
Commander, Mississippi Valley Division
Commander, North Atlantic Division
CF: Commander, Northwestern Division

EXCL. 1

12 DEC 1997

Sample

CECW-BA

MEMORANDUM FOR DIRECTOR OF CIVIL WORKS

SUBJECT: Use of Cooperative Agreements with States Under the Formerly Utilized Sites Remedial Action Program (FUSRAP) -- FOR SIGNATURE

1. **PROBLEM.** Chief Counsel has opined that the U.S. Army Corps of Engineers may enter into cooperative agreements with States when current grants under FUSRAP have expired.

2. **RECOMMENDATION.** That the Director of Civil Works sign the memorandum at the signature tab.

3. **BACKGROUND AND DISCUSSION.**

a. A cooperative agreement is similar to a grant except that a cooperative agreement requires "substantial involvement" between the Federal agency and the State when carrying out the activity contemplated in the agreement (31 U.S.C 6305). We should approach this "substantial involvement" as a partnership with the State in which the Corps maintains oversight of the project without impeding the State's performance of beneficial work.

b. We also can enter into cooperative agreements with States which have not had FUSRAP grants but which have expressed interest in participating in FUSRAP projects.

c. Division commanders will have approval authority for cooperative agreements and may delegate this authority to district commanders.

d. Division commanders will contact States with current or expired grants, and States that have expressed an interest in FUSRAP projects, to encourage their cooperation and participation.

4. **IMPACTS.** The memorandum informs commanders of our authority to continue important relationships with States where FUSRAP projects are located.

5. **COORDINATION.** The memorandum has been coordinated with Chief Counsel, the Director of Military Programs, and the Principal Assistant Responsible for Contracting.



THOMAS F. CAVER, JR., P.E.
Chief, Programs Management Division
Directorate of Civil Works

**COOPERATIVE AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE STATE OF MARYLAND**

THIS COOPERATIVE AGREEMENT ("Agreement") is entered into this ____ day of _____, 199__, by and between the DEPARTMENT OF THE ARMY("Government"), represented by the District Engineer, U.S. Army Engineer District, Baltimore, and the STATE OF MARYLAND("State"), represented by the Director of the Department of the Environment.

INTRODUCTION:

In 1974, the Department of Energy ("DOE") initiated the Formerly Utilized Sites Remedial Action Program ("FUSRAP"). The purpose of FUSRAP is to clean up contaminated sites throughout the United States where work was performed as part of the United States' early atomic energy program. The Energy and Water Development Appropriations Act of 1998 (Public Law 105-62) transferred responsibility for the administration and execution of FUSRAP to the U.S. Army Corps of Engineers.

The Government is authorized to enter into a cooperative agreement with the State for activities associated with remediation at FUSRAP sites (Section 3 of the Rivers and Harbors Appropriations Act of August 11, 1888, 33 U.S.C. § 622; 31 U.S.C. §§ 6304-6305).

By entering into this agreement, the State agrees to provide services/oversight as described under Article I of this agreement. The Government agrees to reimburse the State for eligible services in accordance with the terms and conditions of this agreement.

**ARTICLE I
REIMBURSABLE STATE COSTS**

A. Coverage

This agreement provides the terms and conditions for payment of costs associated with the State providing services to the Government's FUSRAP program within the Baltimore District. This agreement covers activities performed in connection with the W.R. Grace Curtis Bay Facility in Baltimore, Maryland ("W.R. Grace Site").

B. Reimbursable Services

State services that qualify for payment under this agreement include the following types of assistance provided by the State commencing at site identification and continuing through response actions and operation and maintenance, as well as any other cleanup activities that are funded by FUSRAP appropriations:

1. Technical review, comments and recommendations on all documents or data as requested by the Government and in accordance with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Sec. 9601-9675, and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 C.F.R. Part 300, including:

- a. Remedial Investigation/Feasibility Study (RI/FS).
- b. Proposed Plan.
- c. Record of Decision (ROD).
- d. Work Plan - Review the plan and make comments relative to data gaps or further investigation needs, if applicable.
- e. Designs - Review any preliminary or intermediate design plans to ensure that technical requirements of the project have been addressed and to determine if the final design will provide an operable and usable remediation project.
- f. Operation and Maintenance Plan.
- g. Quality Assurance Project Plan.
- h. Site Safety Plan.
- i. Removal assessment.
- j. Removal draft and final design.
- k. Removal sampling and analysis plans.
- l. Removal decision documents.

2. Identification and explanation of State applicable or relevant and appropriate requirements (ARARs) and, as appropriate, other pertinent advisories, criteria, or guidance to be considered (TBCs) related to response actions at the W.R. Grace Site. State ARARs and TBCs must be identified in a timely manner in accordance with the NCP.

3. Participation in technical review committees.
4. Participation, as desired, in any of the following meetings in regard to contracts for response actions:
 - a. Preconstruction conference
 - b. Prefinal inspection
 - c. Final Inspection
5. Participation in the oversight of response actions conducted.
6. Preparation of proposals and administration of this Agreement, including the provisions for recovery of State costs associated with the oversight of the FUSRAP activities described herein.
7. Participation with the Government and other parties in the conduct of public education and community relations, including:
 - a. Participation as an active member of the W.R. Grace Site Remediation Oversight Committee.
 - b. Review of mailing list of interested parties for the site; review of up-to-date fact sheets for distribution to interested parties identified as result of the mailing list. This list will include parties identified as a result of initial contacts, in addition to legislators, congressional representatives, local officials, environmental groups, and other interested parties for use in distributing fact sheets or other site information.
 - c. Assistance in preparation of at least one community update for the project during the project period. This update may consist of a newsletter, a public meeting, a press release, or other media, as determined by the Community Relations Plan.
 - d. Assistance in conducting a public meeting in the city closest to the site when the Remedial Investigation/Feasibility Study is completed.
 - e. Responses to inquiries regarding the sites when requested.
 - f. Assistance in responding to comments received during the public comment period in order for responsiveness summary to be prepared.
 - g. Advance notification of press releases concerning activities covered by this Agreement.

8. Requests through the State's internal procedures for support services from various State and local agencies regarding public health assessment activities and emergency response activities relating to the Government's cleanup of FUSRAP sites.

C. Non-reimbursable Services

1. The Government shall not reimburse the State for the expense of training programs, professional seminars, or conferences unless specifically approved in advance by the Government. In the performance of the activities described in Article I, the State shall provide personnel who are suitably trained, experienced, and possess the necessary capabilities to perform the duties assigned to them, including training, experience, and capability in hazardous, toxic, and radiological waste management.

2. No funds provided hereunder shall be used for regulatory or enforcement activities, including litigation, or for activities for which the State intends to charge the Government under State law or regulations.

**ARTICLE II
REIMBURSEMENT OF STATE COSTS**

A. Reimbursement by the Government

1. Subject to the appropriation of funds by the Congress of the United States and the receipt of such funds, the Government shall reimburse the State, up to the amounts provided in advance by the State as estimated expenses for each Government fiscal year, for all of the State's expenses incurred on or after the date of this Agreement in support of the Government's FUSRAP work at the W.R. Grace Site, as described in Article I, provided the support was reasonable, allowable, and allocable to the W.R. Grace Site. The costs shall include only items of expense that are properly chargeable, including but not limited to labor, materials, transportation, insurance, overhead charges, supervision, surveys, permits, rental of tools, equipment and machinery employed in the work. All original time cards or payrolls, material records, and accounts for all charges and expenditures by the State shall be available at all reasonable times, to allow the Government to check and audit the records of the State. So far as practicable, separate records shall be maintained by the State on all items and accounts that will constitute the basis for the State's claimed costs.

2. In each fiscal year, the State shall provide to the Government quarterly written reports that fairly and accurately summarize the State's activities with regard to the services provided under this Article I, including a report on costs incurred and a request for reimbursement.

3. Payment of eligible State costs for services provided under this Agreement must comply with all applicable Federal procurement and auditing requirements. Procedures for State reimbursement through cooperative agreements are as described in

Office of Management and Budget (OMB) Circulars A-102, A-87, A-133, and Article V of this Agreement. As the State submits requests for reimbursement to Government on a quarterly basis, Government shall process the request and transfer funds in accordance with Circular A-102. Within sixty (60) days after the end of each quarter, the State shall submit to Government a status report, including costs summaries that directly relate allowable costs actually incurred by the State under this Agreement during the quarter to the support provided for the W.R. Grace Site. Allowable costs shall be determined in accordance with this Agreement.

B. Estimates of Reimbursable Costs

1. The State shall provide to the Government its estimate of reimbursable costs for the next fiscal year on or before March 1 of the current fiscal year. The Government shall not be responsible for the payment of any expenses of the State that exceed yearly estimates, including any approved modifications.

2. The State may submit modifications to estimates in writing to Commander, U.S. Army Corps of Engineers (ATTN: CENAB-PP-E), P.O. Box 1715, Baltimore, Maryland 221203. All modifications must be approved by the Government in writing and in advance of payment.

3. Yearly estimates shall not include amounts for the emergency services described in Article I.B.8. The State shall submit as a modification the costs of any emergency services that have been requested and provided.

C. Other Agreements

This Agreement is the mechanism for payment of the costs incurred by the State in providing the support described in Article I for the W.R. Grace Site. Full payment of State costs pursuant to this Agreement constitutes final settlement of any claims the State may have for performance of the support described in Article I for the W.R. Grace Site carried out after October 13, 1997. Any funds disbursed to the State by the Government under the terms of this Agreement shall serve to reimburse the State for FUSRAP activities only, and any equipment or machinery acquired by the State using said FUSRAP funds shall not be used for any other project.

D. Government Funding

The Government will seek sufficient funding through the Government budgetary process to perform its FUSRAP responsibilities, including paying the State for the support described in Article I, subject to the conditions and limitations set forth in this Agreement. If it appears that sufficient funds will not be available to the Government to reimburse the State for the FUSRAP support planned for a coming fiscal year, the Government will so inform the State, prior to the beginning of that fiscal year. The Government and the State will then meet and create a revised list of FUSRAP support for

the State, with a revised cost estimate, for that fiscal year. The revised list shall be signed by both parties and become a modification to this Agreement, effective for only the fiscal year for which it was designed.

E. Anti-Deficiency Act

Nothing in this Agreement shall be interpreted to require any obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

**ARTICLE III
INTERAGENCY COMMUNICATIONS**

A. FUSRAP Coordination Team

To provide for consistent and effective communication, the State and the Government, not later than 30 days after the effective date of this Agreement, shall appoint named senior representatives to a FUSRAP Coordination Team. The Government's Project Manager and a counterpart named by the State shall co-chair the FUSRAP Coordination Team.

B. Team Activities

1. The FUSRAP Coordination Team shall meet regularly throughout the term of this Agreement.

2. The Government's Project Manager and the State's counterpart shall keep the FUSRAP Coordination Team informed of the progress of FUSRAP activities and significant pending issues and actions, and shall seek the views of the FUSRAP Coordination Team on matters that the FUSRAP Coordination Team generally oversees.

3. The FUSRAP Coordination Team shall generally oversee State FUSRAP activities, meaning all of the State's support activities described in Article I.

4. The FUSRAP Coordination Team may make recommendations that it deems warranted to the District Engineer and to the Director, Maryland Department of the Environment, including suggestions to avoid potential sources of dispute. The Government and the State shall each give good faith consideration to the recommendations of the FUSRAP Coordination Team. The Government, having the legal authority and responsibility for implementation of the FUSRAP program, may accept, reject, or modify the FUSRAP Coordination Team's recommendations.

C. Team Costs

The costs of participation by the State in the FUSRAP Coordination Team are reimbursable expenses.

D. State Representative Agency

The Maryland Department of the Environment ("MDE") shall be the representative agency for the State under this Agreement. The Government shall be entitled to rely on the day-to-day advice given and positions taken by any employee or agent of MDE who is named in an "authorized persons" list. That list shall be provided by the Assistant Secretary of MDE to the Government within ten days after the effective date of this Agreement, and shall be updated as necessary. Further, the Secretary of MDE shall furnish a written statement of the State's official position on any particular matter related to this Agreement, within a reasonable time (no longer than thirty days) after receipt of a written request by the Government for an official position.

**ARTICLE IV
DISPUTE RESOLUTION**

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to both parties. The parties shall each pay 50 percent of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance under this Agreement.

**ARTICLE V
RECORDS AND REPORTS**

A. Record Systems

In order to facilitate and to accommodate the terms and conditions of Article II, not later than 60 calendar after the effective date of this Agreement, the Government and the State shall develop procedures for keeping books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement. These procedures shall incorporate, and apply as appropriate, the standards for financial management systems set forth in the Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments at 32 C.F.R. Section 33.20. The Government and the State shall maintain such books, records, documents, and other evidence in accordance with these procedures and for a minimum of three years after the period of this Agreement and resolution of all relevant claims arising therefrom. To the extent permitted under applicable Federal laws and regulations, the Government and the State shall each allow the other to inspect such books, documents, records, and other evidence.

B. Single Audit Act

Pursuant to 32 C.F.R. Section 33.26, the State is responsible for complying with the Single Audit Act of 1984, 31 U.S.C. Sections 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133 and Department of Defense Directive 7600.10. Upon request of the State and to the extent permitted under applicable Federal laws and regulations, the Government shall provide to the State and independent auditors any information necessary to enable an audit of the State's activities under this Agreement. The costs of any non-Federal audits performed in accordance with this paragraph shall be allocated in accordance with the provisions of OMB Circulars A-87 and A-133.

C. Other Audits

In accordance with 31 U.S.C. Section 7503, the Government may conduct audits in addition to any audit that the State is required to conduct under the Single Audit Act. Any such Government audits shall be conducted in accordance with Government Auditing Standards and the cost principles in OMB Circular No. A-87 and other applicable cost principles and regulations.

ARTICLE VI INDEMNIFICATION

The State agrees to hold and save harmless the Government free from all damages arising from the activities to be undertaken herein, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE VII FEDERAL AND STATE LAWS

In the exercise of their respective rights and obligations under this Agreement, the State and the Government agree to comply with all applicable Federal and State laws and regulations, including, but not limited to, Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. 2000d), and Department of Defense Directive 5500.11 issued pursuant thereto, as well as Army Regulations 600-7, entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE VIII REOPENER

The terms of this Agreement may be modified at any time by mutual agreement of the parties. If a party requests the Agreement to be reopened but the other party does not concur, the reopener matter will be referred to an individual designated in writing by the signatories to this Agreement. In the event the two parties fail to agree concerning the

reopener within ten (10) working days after the matter is referred to the above mentioned designated individual, the matter will be referred to the signatories of this Agreement or their successors in office. If no resolution is reached within twenty (20) working days after the matter is referred to the signatories of this Agreement or their successors in office, the Agreement shall not be reopened.

ARTICLE IX RELATIONSHIP OF PARTIES

A. No Agency

In the exercise of their respective rights and obligations under this Agreement, the Government and the State each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other.

B. No Waiver

1. This Agreement does not diminish the authority of the State to fully carry out its statutory and regulatory responsibilities under State and Federal law, or the right of the Government to raise any defenses available under law in the case of any enforcement action brought by the State and others, whether in an administrative or a judicial proceeding.

2. In the exercise of their respective rights and obligations under this Agreement, neither party shall, without the consent of the other party, provide any contractor with a release that waives or purports to waive any rights such other party may have to seek relief or redress against such contractor either pursuant to any cause of action that such other party may have or for violation of any law.

ARTICLE X OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress, nor any resident commissioner, shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom.

ARTICLE XI CONFIDENTIALITY

To the extent permitted by the laws and regulations of each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XII TERMINATION

A. Notification

This Agreement may be terminated by either party if the party seeking termination has notified the other party in writing at least ninety (90) days prior to the expiration of the Agreement. After receiving a notice of termination, a party may invoke the dispute resolution process in Article IV.

B. Expiration Date

Unless terminated at an earlier date by the parties, or otherwise extended by the parties, this Agreement shall expire on September 30, 2002.

C. Continuing Provisions

The provisions of this Agreement that require performance after the expiration or termination of this Agreement shall remain in force notwithstanding the expiration or termination of this Agreement.

**ARTICLE XIII
NOTICES**

A. Addresses

Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and either delivered personally or by telegram or mailed by first-class, registered, or certified mail, as follows:

If to the State:

If to the Government:

District Engineer
U.S. Army Engineer District, Baltimore
P.O. Box 1715
Baltimore, Maryland 21203-1715

B. Changes

A party may change the address to which such communications are to be directed by giving written notice to the other party in the manner provided in this Article.

THE PARTIES HAVE EXECUTED this Agreement to become effective on the date it is signed by the District Engineer.

THE DEPARTMENT OF THE ARMY

THE STATE OF MARYLAND

BY: _____

Bruce A. Berwick
Colonel, CE
District Engineer
U.S. Army Corps of Engineers

BY: _____

Maryland Department of the
Environment

DATE: _____

DATE: _____